

THIS DISPOSITION IS NOT
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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Liebel-Flarsheim Company**

Serial No. 75/094,968

Donald F. Frei of Wood, Herron & Evans, P.L.L. for **Liebel-Flarsheim Company**.

William D. Jackson, Trademark Examining Attorney, Law Office 105
(**Thomas G. Howell**, Managing Attorney).

Before **Hohein**, **Walters** and **Chapman**, Administrative Trademark Judges.

Opinion by **Hohein**, Administrative Trademark Judge:

Liebel-Flarsheim Company has filed an application to register the term "POWER CATH" for "power injectors for injecting contrast media into the body of a human or animal to facilitate imaging body organs and systems by radiography, ultrasound, magnetic resonance, computed tomography, and the like; medical tubing for administration and draining of fluids; containers, namely, syringes; medical apparatus, namely, contrast media power injection operator consoles, console and injector power head mounts, and accessories, namely, extension and interconnect

cables, remote switches, ECG interfaces and pre-amplifiers; syringe pressure jackets and heaters, and bottle holders; all for use in connection with such contrast media power injectors".¹

Registration has been finally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis that, when used in connection with applicant's goods, the term "POWER CATH" is merely descriptive of them.

Applicant has appealed. Briefs have been filed, but an oral hearing was not held.² We affirm the refusal to register.

Applicant, referring to the promotional material it made of record which "describes its two currently marketed contrast delivery systems," explains in its initial brief that:

[A] powered contrast media delivery or injection system includes a syringe which contains the contrast media to be injected into the body, a power head into which the syringe is loaded which contains a motor-operated drive ram which advances a plunger located in the syringe in a very controlled manner to cause the contrast media in the syringe to be injected into the body of the patient or the like at a programmed rate. The ram advance in the power head is controlled by a microprocessor-based console into which a variety of different types of information can be entered to define the programmed injection protocol which will be used.

Applicant stresses, however, that nowhere in its promotional literature "is there any reference to a 'powered catheter,'" nor is such term or the term "POWER CATH" used in the diagnostic

¹ Ser. No. 75/094,968, filed on April 26, 1996, which alleges a bona fide intention to use such term in commerce.

² Although an oral hearing was requested by applicant and scheduled by the Board, applicant subsequently submitted a withdrawal thereof.

medical imaging field, by competitors or medical personnel, in connection with either powered contrast media injectors or their accessories, including catheters. Instead, applicant insists, "there are available to those in the field to which Applicant's goods relate other and better terms to describe the goods in question," such as "'power injectors,' 'angiographic injectors,' and 'CT injectors.'"

In particular, applicant asserts in its initial brief that:

There is no such device as a "powered catheter" in the media injection field. There is a power head into which a syringe is loaded, which contains a motor-operated drive ram which advances a plunger in the syringe to cause contrast media in the syringe to be injected into the body via a tube and a catheter inserted into the body of a patient. However, the foregoing is not a "powered catheter"

Applicant, in consequence thereof, argues in its reply brief that, in relation to its goods:

The catheter is not powered, the tube is not powered; the only element which is powered is the drive ram in Applicant's "power head," which acts on the syringe plunger to force liquid contrast media out of the syringe. Applicant submits that, figuratively speaking, Applicant's POWER CATH mark, at most, suggests, that its injector would function as a "powered catheter," were such a device to exist. In reality, as noted previously, there has never been a catheter which has been powered.

A catheter is simply a hollow needle inserted into the body, through which liquid ... can flow from a source of liquid ... remote from the body. The liquid ... source in the diagnostic imaging field is the syringe containing the liquid contrast media which is inserted into the "power head" and acted upon by the electrically powered drive

ram which, as noted previously, forces liquid out of the syringe into a tube which liquid, in turn, passes through the hollow needle (catheter) into the body of the patient undergoing a diagnostic imaging procedure.

Applicant thus concludes that because the term "POWER CATH" "cannot be found to describe a characteristic, feature or function of a nonexistent product," applicant maintains that it can only, "at best, suggest that its 'power injectors' function as a 'power catheter' would function, were such a product to exist" (underlining in original).

The Examining Attorney, on the other hand, contends that notwithstanding the fact that applicant, after the refusal to register was made final, deleted the word "catheters" from the items listed in the identification of its goods, the term "POWER CATH" is still unregistrable in that it is merely descriptive of applicant's power injectors for injecting contrast media. Specifically, the Examining Attorney insists that even though applicant is no longer seeking registration for the term "POWER CATH" which includes "catheters" as such, "a catheter is still part of a contrast delivery system, as fluids injected into the patient by the [power injector of the] system must pass through a catheter to reach the patient."

In view thereof, and relying upon the Random House Dictionary of the English Language (2d ed. 1993), which defines "power" as an adjective meaning "operated or driven by a motor or electricity" and "power-assisted," and both the Acronyms, Initialisms & Abbreviations Dictionary (18th ed. 1994), which lists "CATH" as signifying "Catheter [*Medicine*]," and the

Dictionary of Medical Acronyms & Abbreviations (2d ed. 1993), which likewise sets forth the term "Cath" as meaning in relevant part "catheter," the Examining Attorney maintains in his brief that (footnote omitted):

[I]t is important to look at the description of the applicant's goods provided by the applicant in its brief. According to the brief, a media contrast delivery system consists of "a power head into which a syringe is loaded, which contains a motor-operated drive ram which advances a plunger in the syringe to cause contrast media in the syringe to be injected into the body via a tube and a catheter inserted into the body of a patient." Applicant's brief, p.5 (emphasis added). A characteristic and feature of the applicant's contrast delivery system is it employs a motor-operated drive ram. A second characteristic and feature of the applicant's contrast delivery system is that it employs a catheter. The motor-operated drive ram in the power head forces the injection media through the catheter. The terms "POWER" and "CATH" both describe a feature of the applicant's goods, and both are descriptive when applied to the applicant's goods.

Furthermore, the combination of the two descriptive terms does not result in a term so incongruous or unusual as to possess no definitive meaning or significance other than that of an identifying mark for the goods. When the term "POWER CATH" is used in connection with the applicant's contrast delivery system it has a descriptive significance. The combination of the terms "POWER" and "CATH" merely describes a motor-driven delivery system for use with a catheter.

It is well settled that a term is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes an ingredient, quality, characteristic or feature thereof or if it directly conveys information regarding the nature, function,

purpose or use of the goods or services. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or idea about them. Moreover, whether a term is merely descriptive is determined not in the abstract but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use. See *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Consequently, "[w]hether consumers could guess what the product [or service] is from consideration of the mark alone is not the test." *In re American Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

In the present case, it is our view that, when applied to applicant's "power injectors for injecting contrast media into the body of an animal or human to facilitate imaging," the term "POWER CATH" immediately describes, without conjecture or speculation, a significant purpose, function or use of such goods, namely, that they act to power a catheter and thus, in effect, constitute power catheter injectors. The definitions from acronym dictionaries, in particular, show that "CATH" is a commonly recognized term for catheter. Thus, to the radiologists and other medical personnel who would be the principal users

and/or purchasers of applicant's contrast media power injectors, there is nothing in the combination of the terms "POWER" and "CATH" into the term "POWER CATH" which is ambiguous, incongruous or perhaps susceptible to another plausible meaning. See, e.g., Remington Products Inc. v. North American Philips Corp., 892 F.2d 1576, 13 USPQ2d 1444, 1448 (Fed. Cir. 1990) ["TRAVEL CARE" held merely descriptive of travel irons and other personal care products since a person "seeing 'travel care' *in connection with products* is going to treat 'travel care' adjectivally and assume it refers to *products*" which "a traveler takes along to care for something"].

Moreover, the fact that neither applicant's product literature nor any of its competitors utilize the terminology "power cath" or "power catheter" in reference to power injectors for injecting contrast media into the body to facilitate the imaging thereof does not mean that the term "POWER CATH" is at best suggestive rather than merely descriptive of such goods. As the Examining Attorney has also correctly observed, the fact that applicant intends to be the first and only user of such term in connection with its products does not justify registration when, as the dictionary excerpts make clear, the term "POWER CATH" merely describes goods which, when used with catheters, function as power catheter injectors for injecting contrast media. See, e.g., In re International Game Technology Inc., 1 USPQ2d 1587, 1589 (TTAB 1986); In re National Shooting Sports Foundation, Inc., 219 USPQ 1018, 1020 (TTAB 1983); and In re Pharmaceutical Innovations, Inc., 217 USPQ 365, 367 (TTAB 1983).

Accordingly, because the term "POWER CATH" conveys forthwith a significant purpose, function or use of applicant's "power injectors for injecting contrast media into the body of a human or animal to facilitate imaging body organs and systems," it is merely descriptive of such goods within the meaning of the statute.

Decision: The refusal under Section 2(e)(1) is affirmed.

G. D. Hohein

C. E. Walters

B. A. Chapman
Administrative Trademark Judges,
Trademark Trial and Appeal Board